

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
AT MEMPHIS**

<b>OUTMEMPHIS; JANE DOE #1;</b>	)	
<b>JANE DOE #2; JANE DOE #3; and</b>	)	
<b>JANE DOE #4;</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 2:23-cv-02670</b>
	)	
<b>BILL LEE, in his official capacity as</b>	)	<b>Chief Judge Lipman</b>
<b>Governor of Tennessee; JONATHAN</b>	)	
<b>SKRMETTI, in his official capacity as</b>	)	<b>Magistrate Judge Claxton</b>
<b>Attorney General and Reporter of</b>	)	
<b>Tennessee; DAVID RAUSCH, in his</b>	)	
<b>official capacity as Director of the</b>	)	
<b>Tennessee Bureau of Investigation; and</b>	)	
<b>FRANK STRADA, in his official capacity</b>	)	
<b>as Commissioner of the Tennessee</b>	)	
<b>Department of Correction;</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

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**DEFENDANTS’ MOTION TO DISMISS**

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Defendants, Governor of the State of Tennessee Bill Lee, Director of the Tennessee Bureau of Investigation David B. Rausch, Tennessee Attorney General and Reporter Jonathan Skrmetti, and Commissioner of the Tennessee Department of Correction Frank Strada, hereby move to dismiss Plaintiffs’ complaint in its entirety pursuant to Fed. R. Civ. P. 12(b)(1) and (6).

Dismissal is appropriate for three separate reasons. *First*, sovereign immunity bars all claims against Defendants Lee, Skrmetti, and Strada. Defendant Rausch also enjoys sovereign immunity because he does not enforce the exclusion zones and reporting requirements at issue in Plaintiffs’ allegations.

*Second*, OUTMemphis lacks organizational standing to press either its constitutional or Americans with Disabilities Act (“ADA”) claims. Moreover, because Defendants Lee, Skrmetti, and Strada do not enforce the statutes at issue, no Plaintiff has standing to sue them. And finally, Plaintiffs lack standing to sue Defendant Rausch because his limited role is administration and publishing of the Tennessee sex offender registry, which Plaintiffs have not placed at issue.

*Third*, Plaintiffs fail to state either a valid ADA or constitutional claim. A plain reading of the ADA’s statutory language demonstrates that OUTMemphis does not have a cause of action under the ADA. And to apply the ADA in the manner sought by Plaintiffs—to invalidate Tennessee’s aggravated prostitution statute and the sex offender registry requirement—would exceed the constitutional authority Congress relied upon enacting the ADA. For their constitutional claims, Plaintiffs cannot demonstrate that the challenged statutes fail rational basis review. Tennessee’s decision to safeguard the public health by punishing those who knowingly engage in prostitution—a method of transmission not disputed by Plaintiffs—more than passes rational basis muster. For their equal protection claim, Plaintiffs fail to point to a similarly situated comparator. The aggravated prostitution statute is not discriminatory because it criminalizes *knowing* conduct, not *being* HIV positive. Finally, Plaintiffs fail to state valid Eighth Amendment or Ex Post Facto claims. The only permissible defendant for these claims is Defendant Rausch, but his responsibilities are limited to maintaining and publishing the nonpunitive sex offender registry, duties which are neither punitive nor retroactive to the Jane Doe Plaintiffs.

Accordingly, for these reasons, as set forth in the accompanying memorandum of law, all of Plaintiffs’ claims against Defendants should be dismissed.

Respectfully submitted,

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/s/ John R. Glover

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing was filed and served via the Court's electronic filing system on this the 12th day of January, 2024, upon:

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